

OUTLOOK

A Publication of the South Dakota Retirement System

Number 3 October 2008

Board Action

Board Makes Legislative Proposals

At its September 3, 2008, meeting, the SDRS Board of Trustees approved legislation to propose to the 2009 Legislature.

The federal law governing SDRS allows participants in public retirement plans to purchase “nonqualified permissive service credit.” However, SDRS members face tighter restrictions than required under federal law because SDRS does not allow purchases of some nonqualified permissive service credit. Proposed legislation would remove the restriction to allow for such purchases and define the timeframe when these purchases could be made.

Proposed “clean-up” legislation would amend current statutes and laws. If passed by the Legislature, this proposal would

- Allow new employer units to join SDRS at the beginning of a quarter
- Include surviving spouses and non-spouse beneficiaries in SDRS lump-sum payouts
- Clarify that a member who redeposits a refund, plus interest, is treated as though the member never received a refund, except for the purposes of qualifying for survivor benefits (including optional spouse benefits) and disability benefits
- Establish in-service payouts to automatic enrollees in SRP who choose to opt out of that program
- Include surviving spouses and non-spouse beneficiaries of SPP participants in permitted plan rollovers to qualified or eligible plans

Trustees Consider Effects of Initiated Measures 9 and 10 on SDRS

The SDRS Board of Trustees discussed Initiated Measure 9— Small Investors Protection Act—and Initiated Measure 10—Open and Clean Government—at their September 3, 2008, meeting.

According to the Attorney General’s explanation of the measures:

- Initiated Measure 9 would prohibit the common stock market practice of a “short sale” and prohibit anyone from taking longer than three business days to deliver securities.
- Initiated Measure 10 would prohibit state and local governments, their officers, employees, contractors, and consultants from using any government resources for campaigning or lobbying.
- If adopted, Initiated Measures 9 and 10 will likely be challenged in court and may be declared to be preempted by federal law and/or in violation of the United States Constitution. If so, the State may be required to pay attorney fees and costs.

Please refer to pages 2 and 3 for the Attorney General’s complete explanation of these two initiated measures.

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Initiated Measure 9

This has been reprinted from the 2008 Ballot Question Pamphlet Compiled by the Office of Secretary of State Chris Nelson

Initiated Measure 9

Title: An Initiative to make certain securities practices and transactions unlawful.

Attorney General Explanation

State and federal law regulates the purchase and sale of stocks and other securities.

A common “stock market” transaction is a “short sale” where, for example, an investor who believes a publicly traded stock is over-priced will borrow that stock from an owner, sell the borrowed stock, and repurchase the stock later at a lower price to repay the loan, thereby making money if the price has fallen. If the price goes up, the investor must repurchase the stock at the higher price to repay the loan, and will lose money. Measure 9 would prohibit short sales.

State law currently does not regulate the time frame for the delivery of securities upon sale. Measure 9 would prohibit anyone from routinely taking longer than three business days to deliver securities they have sold.

If adopted, Measure 9 will likely be challenged in court and may be declared to be preempted by federal law and the United States Constitution.

A vote “Yes” will adopt the proposed law.

A vote “No” will reject the proposed law.

Pro – Initiated Measure 9	Con – Initiated Measure 9
<p>Initiated Measure 9 – <u>The South Dakota Small Investor Protection Act</u> – allows for action within the State of South Dakota if the seller of stock in publicly traded companies:</p> <p><i>“Has engaged in a pattern of commercially unreasonable delay in the delivery of securities sold, or has sold securities that the person did not own or have a bona fide contract to purchase.</i></p> <p><i>For the purposes of this subdivision, commercially unreasonable is presumed to be more than three business days.”</i></p> <p>This means that when a South Dakotan buys stock, it must be timely delivered from seller to buyer.</p> <p>The same existing requirements under Federal law are not being enforced. According to testimony before the US Senate, each day more than \$6 billion in stock is sold but not delivered to buyers – including stock in some of South Dakota’s best-known companies.</p> <p>This illegal activity puts South Dakota small investors at risk, as well as South Dakota public pension funds that invest in stocks, and ultimately South Dakota taxpayers.</p> <p>The Securities and Exchange Commission recently began enforcing its 3-day delivery rule – but only for 19 large banks and Wall Street firms – leaving investors in the rest of America’s publicly-traded companies at risk.</p> <p>Voting “YES” on 9 will allow our courts to intervene when Federal bureaucrats and New York courts don’t.</p> <p>The initiative, written by former South Dakota Attorney General Mark Meierhenry, does not end short selling. It does not even mention short selling. The law enables Federal law to be enforced in South Dakota courts.</p> <p>When someone robs a South Dakota bank, they face both Federal and state prosecution. Under Initiated Measure 9, when someone cheats a South Dakota investor, they too will face both Federal and South Dakota action.</p> <p>To protect South Dakotans, vote “YES” on 9.</p> <p>Submitted by: Mark V. Meierhenry, Danforth & Meierhenry, LLP, 315 S. Phillips Ave, Sioux Falls, SD 57104 and Mr. Tim Mooney, Arno Political Consultants, 38060 N. Miramonte Drive, Cave Creek, AZ 85331</p>	<p>Because this initiative outlaws a practice called “short selling” that is already authorized and regulated by federal law, the courts will undoubtedly strike it down as unconstitutional under the Supremacy Clause of the United States Constitution. South Dakota taxpayers will bear the financial burden of defending this unnecessary new measure if it passes, even though out of state private interests brought it to South Dakota.</p> <p>A short sale is the sale of a security that the seller does not own and does not have a contract to purchase, such as a sale for which a seller delivers, or will deliver, borrowed securities.</p> <p>Of immediate concern, the initiative will have negative consequences our economy as the case drags through the judicial system. The proposal is not restricted to in state transactions, but rather applies to transactions anywhere by any company registered to do business in South Dakota, which includes all major national broker-dealers. Because of the broad sweep of the act, it applies not only to in state broker-dealer employees but to officers and directors wherever located. The companies will have only one choice, to exit the state. Even if companies found ways to do business here they would probably choose not to do so, because the initiative would disrupt their national trading systems. Small business issuers would also be hurt raising capital.</p> <p>Under current South Dakota and federal securities law, manipulative short selling constitutes fraudulent activity and a crime. Current regulatory, criminal and civil remedies under both state and federal law adequately govern those persons or entities that fraudulently manipulate short sale transactions. No need exists for additional state law to protect investors or small businesses from abusive short sale practices.</p> <p>The initiative would be unnecessary, expensive, and economically harmful to South Dakota. Vote No.</p> <p>Submitted by: Gail Sheppick, Director of the South Dakota Division of Securities, 445 E. Capitol Avenue, Pierre, SD 57501</p>

Initiated Measure 10

This has been reprinted from the 2008 Ballot Question Pamphlet Compiled by the Office of Secretary of State Chris Nelson

Initiated Measure 10

Title: An Initiative to prohibit tax revenues from being used for lobbying or campaigning, to prohibit governmental bodies from lobbying, to prohibit government contractors from making campaign contributions, to prohibit government contracts when the contractor employs a legislator or legislative staff member, and to require contracts with governmental bodies to be published.

Attorney General Explanation

State law prohibits the acceptance of campaign contributions from all government and tribal entities, expenditure of public funds to support or oppose ballot measures, and certain state and county contracts which financially benefit legislators.

Measure 10 would prohibit state and local governments, their officers, employees, independent contractors, consultants and candidates, from using government revenues or resources for campaigning or lobbying. Some communications and appearances before legislators and public bodies are exempted.

It would prohibit persons who employ legislators or recent legislators from obtaining government contracts. It would prohibit, until two years after contract termination: some public officers, candidates and their agents from soliciting, accepting or directing contributions from some holders of competitively bid government contracts and their family members; and no-bid government contract holders, their officers, employees, agents, vendors and family members from making contributions to, or independent expenditures for, all candidate campaigns.

The Secretary of State would be required to summarize government contracts over \$500 on its website.

If approved, all or part of Measure 10 will likely be challenged in court and may be declared to be in violation of the United States Constitution. If so, the State may be required to pay attorney fees and costs.

A vote "Yes" will adopt the proposed law.

A vote "No" will reject the proposed law.

Pro – Initiated Measure 10

VOTE YES on 10 to bring common sense public disclosure and ethics reform to our state and local governments, the same standards we already require by law of our federal officials in Washington.

VOTE YES on 10 to stop politicians from handing out "pay to play" government contracts in exchange for campaign money, stop retiring politicians and bureaucrats from trading their political influence for high-paying jobs after leaving office, and require that relationships between government officials and contractors be made transparent by disclosing contract information on a public website.

VOTE YES on 10 to stop the use of taxpayer dollars for lobbying and political campaigns, and stop politicians from spending tax dollars to funnel money to government employee union officials who spend their funds lobbying and campaigning against South Dakota values.

Over 26,000 South Dakotans signed the petition to place Measure 10 – South Dakota's Open and Clean Government Act – on our November ballot, and a recent poll found that 63 percent of South Dakotans say they plan to **VOTE YES on 10**.

So who are the tiny minority – only ten percent, the poll found – who *oppose* common sense public disclosure and ethics reform?

- Certain politicians and bureaucrats who want to *continue* their cozy financial relationship with lobbyists and government contractors, including campaign contributions in return for no-bid contracts and the chance of being hired after leaving office.
- Lobbyists and no-bid contractors who want to *continue* benefiting financially by rewarding politicians and bureaucrats who have authority to spend our tax dollars.
- Lobbyists and government employee union officials who want to *continue* using tax dollars – or union dues withheld from government paychecks at taxpayers' expense – to pay for their lobbying and political activities.

But in South Dakota, thankfully, the people rule.

Please VOTE YES on 10.

Submitted by: Former State Treasurer Richard D. Butler, D-Faith
P.O. Box 100, Faith, South Dakota 57783 and Samuel R. Kephart, R-Spearfish
401 Aspen Drive, Spearfish, South Dakota 57783. Affiliated with South Dakotans for Open and Clean Government.

Con – Initiated Measure 10

We seldom agree. But we both believe Initiated Measure 10 is really bad law. And we're not alone. Numerous statewide associations representing education, business, government, unions, agriculture, political parties, health care, public service, communications, and seniors have signed on to oppose 10.

Initiated Measure 10 is a cynical, deceptive attempt to manipulate South Dakota's voters by **restricting political participation** in the name of open government. The proponents make unsubstantiated claims about the broken political system, can't get mainstream groups to support their cause and won't reveal the source of their own funding, despite their calls for transparency.

If passed, **out-of-state groups** will have fewer restrictions and, therefore, **more power** to impact our elections and laws than South Dakotans will have. It helps them and gags us.

Measure #10 could easily **make you a criminal**.

It lists twenty categories of your relatives (plus "domestic partner"). If any of them receive \$500 or more from state/local governments and you contribute anything to any political campaign, then you are guilty of a crime unless you can prove in court that you "didn't" know about the \$500. Proving a negative is very hard. Your punishment could be **thirty days in jail, \$500 fine, or both**.

Also, if you sell anything to state/local government, you can't even say anything nice about your mother if she runs for a state or local elective office because that would be "inducing" or "soliciting" under Measure #10.

If the local states attorney doesn't arrest you within 15 days, Measure #10 gives any citizen the new power to go directly to court and **have you immediately charged** with these crimes.

Please read all 1,967 words of Measure #10 below and ask yourself if you understand all of its potential impacts. It is a mess. **Please vote NO on Measure #10.**

Submitted by: Karl Adam, Chair, South Dakota Republican Party, 415 S. Pierre St., Pierre, SD 57501 and Jack Billion, Chair, South Dakota Democratic Party, PO Box 1485, Sioux Falls, SD 57101



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SDRS Board Notes

The following is a summary of major issues that came before the SDRS Board of Trustees at its meeting on September 3, 2008.

September 3, 2008

Initiated Measures

Board members took action to formally oppose Initiated Measure 9 – South Dakota Small Investors Protection Act—and Initiated Measure 10 – Open and Clean Government.

Proposed Legislation

Rob Wylie, SDRS' executive director/administrator, and SDRS General Counsel Wade Hubbard discussed 2009 legislation. The Board of Trustees approved the proposals.

Financial Status

Dave Slishinsky and Doug Fiddler,

actuaries with Buck Consultants, joined Mr. Wylie to make a report on SDRS' funded status. Mr. Slishinsky presented funded status projections for June 30, 2009.

As part of the update on SDRS' 2008 financial status, Mr. Wylie presented a report on SDRS membership and experience, and State Investment Officer Matt Clark and Assistant Investment Officer Tammy Otten made a presentation on the portfolio's investment performance during fiscal year 2008.

Reports and Discussions

The board's nominating committee presented a report.

The board re-elected Elmer Brinkman as chair and Justice Steven Zinter as vice chair.

Paul Schrader led a discussion on the SDRS mission statement and income replacement goals.

June Larson of Nationwide Retirement Solutions made a presentation on the Supplemental Retirement Plan.

Present: Brian Berglin, Elmer Brinkman, Matt Clark, Cathy Druckrey, Jason Dilges, Laurie Gustafson, James Hansen, Ray Hofman, Chuck Holmstrom, James Johns, Louise Loban, Darwin Longieliere, Kathy "KJ" McDonald, Janice Coleman, Sandy Zinter, Justice Steven Zinter.

Absent: Eric Stroeder

